(2015) 04 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD APPELLANT

Vs

Dev Medical Agency RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : 2015 2 CPR 459

Hon'ble Judges : V.B.GUPTA , B.C.Gupta J.

Advocate : VINOD MAHENDRU , LEKH RAJ SHARMA , B.S.TAUNQUE

Judgement

1. THESE are two revision petitions filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 17.03.2011, passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (for short ''the State Commission'') in First Appeal No. 2998 of 2007, "New India Assurance Co. Ltd. vs. Dev Medical Agency and Anr." and First Appeal No. 2999 of 2007, "National Insurance Co. Ltd. Vs. Dev Medical Agency and Anr.", vide which, while dismissing the said two appeals, the order dated 25.09.2007, passed by the District Consumer Disputes Redressal Forum, allowing the consumer complaint no. 341 of 2006 filed by Dev Medical Agency was upheld.

2. BRIEFLY stated, the facts are that respondent no. 1/Complainant, Dev Medical Agency through its partner, Ranbir Sharma was running the business of medical store and their business premises was insured with the petitioner Insurance Companies viz. the New India Assurance Co. Ltd. and the National Insurance Co. Ltd. The insurance was made vide cover note no. 030940 dated 02.03.2004 for a sum of Rs. 10 lakhs with the New India Assurance Co. Ltd. and vide cover note no. 267969 dated 14.02.2004 for a sum of Rs. 5 lakhs with the National Insurance Co. Ltd. It has been stated by the complainant in the consumer complaint before the District Forum that there was theft in the said shop on the intervening night of 5/6.04.2004. The local police was informed and an FIR No. 94 dated 07.04.2009, under Section 380/457 IPC was registered at Police Station Chandni Bagh. The Insurance Companies were also informed by the complainant which appointed surveyor to assess the loss. According to the complainant,

closing stock available in the shop as on 31.03.2004 was valued at Rs. 12,82,190.02/ -. Besides, medicines worth Rs. 16,658/ - were purchased during the period 02.04.2004 to 05.04.2004, and these were also available in the shop at the time of theft. The complainant stated that he had requested the Insurance Companies to give compensation for the loss of Rs. 10,64,103/ - and had submitted all necessary documents to them, but the Insurance Companies did not accept his claim. Alleging harassment and mental agony at the hands of the Insurance companies, the complainant filed the consumer complaint in question seeking direction to the petitioners to pay Rs. 15 lakhs as compensation and Rs. 50,000/ - for mental agony and physical harassment. The complaint was resisted by the Insurance Companies by filing their written statements before the District Forum. The New India Assurance Co. Ltd. stated that a preliminary spot survey was got done through Ashish Bahl, surveyor and later on, assessment was got made by Consolidated Surveyors Pvt. Ltd. and as per their report, the total loss assessed was Rs. 2,93,356.58/ -. The said figure was apportioned between the two Insurance Companies, whereupon the share of New India Assurance Co. Ltd. was fixed at Rs. 97,785.53/ - and that of National Insurance Co. Ltd. was Rs. 1,92,571.05/ -. The Insurance Companies also stated that as per the report of the surveyor, the insured had manipulated the accounts, vouchers, etc, so as to increase the projected stock and to avail undue benefit under the policy. The sale and purchase figures were not authentic, as they did not tally with the sales tax returns and the balance sheet. There was, therefore, a breach of conditions of the insurance policy and hence, the claim was repudiated vide letter dated 23.03.2005. There was, therefore, no deficiency in service on the part of the Insurance Company. The National Insurance Company also filed their reply on similar lines, saying that the claim was repudiated by them as there was breach of policy terms and conditions. The District Forum, after taking into account the evidence of the parties, directed the opposite parties to make payment of Rs. 10,64,103/ - alongwith interest at the rate of 9% per annum from the date of repudiation of the claim i.e. 23.03.2005 and to pay their respective shares and further, a sum of Rs. 3,300/ - as litigation expenses.

3. BEING aggrieved against this order, both the petitioners filed appeals before the State Commission. However, the State Commission vide impugned order, upheld the order passed by the District Forum. Being aggrieved against the impugned order, the two Insurance Companies are before us by way of the present revision petition. It has been vehemently argued by the learned counsel for the Insurance Companies that the surveyors M/s. Consolidated Surveyors Pvt. Ltd. had stated in their report dated 22.11.2004 that the complainant/ respondent no. 1 was guilty of manipulation of records, because different figures for sale and purchase had been given by them in three different documents, namely, the Sales Tax Returns, Balance Sheet etc. The complainant had therefore violated the terms and conditions of the policies and hence, the claim had been rightly repudiated by the Insurance Companies. In support of their arguments, the learned counsel for the petitioners has drawn our attention to the orders

passed by this Commission in New India Assurance Co. Ltd. Vs. Balaji Emporium, 2015 1 CPJ 588 , saying that the surveyor''s report should be given due weightage and there should be solid reasons for rejecting the same. It has been held by the Hon''ble Supreme Court in Sikka Papers Ltd. Vs. National Insurance Co. Ltd. and Ors., 2009 7 SCC 777 that although the report of the surveyor is not the last word, yet there must be legitimate reasons for departing from the said report. In Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd., 2009 8 SCC 507, the Hon''ble Apex Court stated that the Insurance Company has to give satisfactory reasons for not accepting the report of first surveyor. The State Commission, in the impugned order had wrongly relied upon the orders passed by the Hon''ble Supreme Court in New India Assurance Co. Ltd. Vs. Pradeep Kumar in Civil Appeal No. 3253/2002 decided on 09.04.2009, saying that although assessment of loss by an approved surveyor is a prerequisite for payment of settlement of claim, the surveyor''s report is not the last and final word. The learned counsel argued that in the present case, the complainant had not been able to rebut the version given in the report of the surveyor and hence, there was no need to discard the said report. The learned counsel for the National Insurance Company stated that the value of stocks as shown at the end of the year 2002 -2003 and that at the end of the year 2003 -2004 showed that the stocks had doubled during one year only, which was highly improbable. The Surveyor had requested the insured to provide them the requisite documents and given necessary clarification vide their orders dated 24.10.2004 and 16.11.2004, but the insured did not respond to these letters. The orders passed by the Consumer Fora below were, therefore, not based on a correct assessment of the situation on record.

4. THE learned counsel for the respondent, however, stated that the orders passed by the Consumer Fora below were in accordance with law and should be upheld. He stated that the respondent was an illiterate, rustic shopkeeper and hence, he could not be expected to maintain exact accounts and there was bound to be some difference in figures given in various documents. The respondent had filed his affidavit in support of his version given in the complaint and hence, the present petitions were without any force.

5. WE have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

6. THE basic issue that arises for our consideration in the present case is whether the Consumer Fora below have rightly made departure from the report of the surveyor and have allowed compensation as per demand of the complainant in his complaint. A perusal of the orders passed by the District forum, duly confirmed by the State Commission in appeal, shows that the Consumer Fora below have not given any reasons for directing the opposite parties to make payment of Rs. 10,64,103/ - to the complainant alongwith interest at the rate of 9% per annum. The complainant has nowhere been able to prove that the stocks of that amount were stolen from their premises during the alleged incident of

theft. On the other hand, the surveyor has brought out very clearly that the complainant had given different figures of sale and purchase in three different documents submitted by them. The figures given in the sales tax returns, the balance sheet and as per the sale and purchase account were different. Further, the figure of purchase reflected in the sales tax return for the last quarter of 2003 -2004 was quite different from the figure as per the purchase invoices and purchase account. The surveyor have rightly stated in the said report that they wrote several letters to the complainant to provide them the necessary documents and to give clarification about the difference in figures in different documents, but the complainant failed to provide them the said documents. The surveyor evaluated the value of the stock at the time of burglary as Rs. 6,24,253.30/ -. After deducting the value of the left - over stock and the dead stock @ 5%, the value of shortage of stock has been assessed to be Rs. 3,91,142.11/ -. The surveyor has made a further allowance of Rs. 97,785.53/ - on account of manipulation of figures and assessed the net loss at Rs. 2,93,356.58/ -. From the material on record, it has nowhere been established that the assessment made by the surveyor suffers from any infirmity etc.

7. FURTHER , we do not agree with the view given by the learned counsel for the complainant/respondent no. 1 that the owner of the shop is an illiterate, rustic person and hence, he is not able to maintain the accounts properly. In fact, the business of dealing with medicines has to be done by a licensed Pharmacist, who is supposed to be an educated person, well -conversant with matters related to maintenance of accounts as well. In fact, the assertion on the part of the complainant/respondent no. 1 that the complainant is an illiterate, rustic fellow, strengthens the view taken by the surveyor that the accounts had not been maintained properly and there were variations in figures in different documents.

8. THE judgments quoted by the petitioners as well as that quoted by the State Commission do mention that the report of the surveyor is not the last word, but the legal position on the subject is very clear that unless there are sufficient grounds to make a departure from the report of the surveyor, the same should not be discarded. The Hon''ble Supreme Court has made it very clear in Sri Venkateswara Syndicate Vs. Oreintal Insurance Co. Ltd. that there has to be cogent and convincing grounds to discard the report of the first surveyor and to take a decision to appoint another surveyor etc.

9. BASED on the discussion above, it is held that the orders passed by the Consumer Fora below do not reflect a correct appreciation of the facts and legal position on the issue and the same deserve to be set aside, and we order accordingly. However, we do not agree with the contention of the petitioners that the claim should be repudiated in total, on the ground that the complainant has violated the terms and conditions of the policy. The factum of theft has not been denied by the opposite parties and hence, the complainant needs to be compensated for the loss suffered by him, in the light of the fact that he stands indemnified by two different insurance policies. We are, therefore, of the view

that the complainant/respondent no. 1 should be paid as per the assessment made by the common surveyor appointed by the two Insurance Companies. The compensation shall be paid to them in the same proportion by the two companies as reflected in the surveyors report alongwith interest @ 9% per annum from the date of complaint till realization. The two revision petitions are, therefore, partly allowed and the petitioners are directed to make payment according to the report of the surveyor. There shall be no order as to costs.

